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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/723,455

11/25/2003

Kim R. Smith

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5980

7590

11/30/2006

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EXAMINER

OGDEN JR, NECHOLUS

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/723,455

Applicant(s)

SMITH ET AL.

Examiner

Necholus Ogden

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 17-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 4/04/6/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of claims 17-38 in the reply filed on 9-6-2006 is acknowledged. The traversal is on the ground(s) that there is no stated reason or burden on the examiner for the restriction. This is not found persuasive because the method of using can be practiced with a different product such as 100% solvent systems. Moreover, the method of using is classified in a different area.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-16 and 39 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over CA (2,292,966).

CA '966 discloses a hard surface cleaning composition comprising a nonionic surfactant such as 0.001 to 20% by weight of a polyalkoxylated alcohol (page 6, lines 21-26); up to 10% by weight of anionic and nonionic surfactants (page 9, lines 22-30), wherein said anionic surfactants include alkyl benzene sulfonates, alkyl sulfates, and said nonionic surfactants include ethoxylated alcohols and alkyl polyglycosides (page 10, lines 23-30). CA '966 further includes solvents such as organic alcohols in an

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amount from 1 to 10% by weight (page 1, lines 23-28) and includes glycol ethers (page 12, lines 1-9). With respect to the dispersant component, CA '966 includes up to 0.5% by weight of copolymers of acrylic acid and derivatives thereof (page 13, lines 1-8). See examples E1-E3.

As this reference teaches all of the instantly required it is considered anticipatory.

In the alternative, CA '966 is silent with respect to the visible precipitation and grain hardness, however, these limitations would have encompass these limitations given that each of the components of the claimed invention are taught and required by CA '966.

7. Claims 1-16 and 39 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over EP (0630965).

EP '965 discloses a liquid hard surface cleaning composition comprising a sequestrant comprising a maleic acid-olefin copolymer in amounts from 0.02 to 1.0 (page 2, line 50-page 3, line 11). EP '965 further includes 0.05 to about 10% by weight of a detergent surfactants such as anionic, nonionic, and zwitterionic surfactants. The anionic surfactants include alkyl sulfates, sulfonates, alkoxylated sulfates and the zwitterionic surfactants include amidoalkylenesulfobetaine surfactants (pages 4-5). The solvents of EP '965 include up to 50% by weight of glycol ethers and ethoxy alkanols (page 8, lines 39-68). See examples A-D.

As this reference teaches all of the instantly required it is considered anticipatory.

In the alternative, EP '965 is silent with respect to the visible precipitation and grain hardness, however, these limitations would have encompass these limitations

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given that each of the components of the claimed invention are taught and required by EP '965.

8. Claims 1-11 and 13-16 and 39 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 94/14942

WO 94/14942 disclose a hard surface cleaning composition comprising 1 to 25% by weight of a surfactant such as anionic and nonionic surfactants such as alkyl sulfates and ethoxylated alcohols (page 3, line 8-page 4, line 35). WO 94/14942 further include 1 to 30% by weight of a film forming polymer such as polymers of acrylic acid and methacrylic acid (page 7, lines 7-35); and 0.05 to 11% by weight of an alcohols (page 8, lines 15-19). Other solvents include lower ether alcohols, ethanol and isopropanol (page 9, lines 1-8). WO 94/14942 teaches that said concentrations may be diluted with water in ratios from m1:10 to 1:200.

As this reference teaches all of the instantly required it is considered anticipatory.

In the alternative, WO '942 is silent with respect to the visible precipitation and grain hardness, however, these limitations would have encompass these limitations given that each of the components of the claimed invention are taught and required by WO '942.

9. Claims 1-16 and 39 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Cummings (5,750,482).

Cummings discloses a non-streaking glass cleaning composition comprising a co-solvent in an amount from 0 to 10% by weight and comprises a glycol ether (col. 4,

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lines 15-51); 0.001 to 2% by weight of an anionic, nonionic, cationic and zwitterionic surfactant (col. 5, lines 7-64); and 0.02 to 2.0% by weight of a builder component such as a polyacrylic resin (col. 7, lines 29-35). See examples S, U and Y.

As this reference teaches all of the instantly required it is considered anticipatory.

In the alternative, Cummings is silent with respect to the visible precipitation and grain hardness, however, these limitations would have encompass these limitations given that each of the components of the claimed invention are taught and required by Cummings.

10. Claims 1-16 and 39 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Misselyn et al (5,486,307).

Misselyn et al disclose a light duty liquid duty cleaning composition comprising 0 to 10% by weight of a grease release polymer; 1 to 50% by weight of at least one surfactant such as anionic, nonionic and zwitterionic surfactants; 1-15% by weight of a co-surfactant; 0 to 15% by weight of a solubilizing agent and the balance being water (col. 4, lines 35-60). Misselyn et al teach that said anionic surfactant includes alkyl benzene sulfonates, alkyl sulfates, alkyl ether sulfates and said nonionic surfactant include alkyl polyglucosides and mixtures thereof (col. 6-col. 7, line 50). The co-surfactant includes alkyl glycol ether solvent components (col. 9, lines 24-62).

As this reference teaches all of the instantly required it is considered anticipatory.

In the alternative, Misselyn et al is silent with respect to the visible precipitation and grain hardness, however, these limitations would have encompass these limitations

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given that each of the components of the claimed invention are taught and required by Misselyn et al.

Double Patenting

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 1-16 and 39 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-26 and 1-15 of copending Application No. 11/264,820 and 11/018,046, respectively. Although the conflicting claims are not identical, they are not patentably distinct from each other because they overlap in subject matter pertaining to cleansing compositions comprising dispersants, anionic surfactants and sheeting agents.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

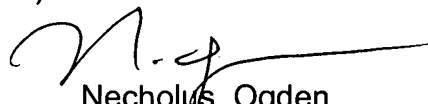
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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholus Ogden whose telephone number is 571-272-1322. The examiner can normally be reached on M-T, Th-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Necholus Ogden
Primary Examiner
Art Unit 1751

No
11-25-2006